No. 12175

In the United States
COURT OF APPEALS
for the Ninth Circuit

IN RE J. ROBERT PATTERSON,
Appellant.

APPELLANT'S REPLY BRIEF

Appeal from the Judgment of the United States District Court for the District of Oregon.

HON. JAMES ALGER FEE,
HON. CLAUDE MCCOLLOCH,
Judges.

B. A. GREEN,
MASON DILLARD,
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JAMES C. DEZENDORF,
Representing the Standing Committee on Discipline.

STEVENS-NESS LAW PUB. CO., PORTLAND 6-49

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FOREWORD

An attempt will be made to answer the serious charges that the Committee has made against the Appellant in their brief. Significantly, much of the statement is devoted to stating general principles of law, with which we do not seriously disagree.

Respondent states that the facts are largely undisputed and are authoritatively stated in the findings (R. B. P. 1). The first portion of the statement is true.

The facts are not disputed because the appellant has been honest and "above-board" throughout the tortious course of these disciplinary proceedings. The second portion of the statement which refers to the findings overlooks the fact that this appeal is based upon the proposition that the evidence is insufficient to support the findings and judgment.

It is submitted that the committee has made no attempt, either in the statement of facts or elsewhere, to subject the evidence to careful analysis, free from suspicion, in support of the contention that the appellant has been guilty of such gross professional misconduct that he should forever be disbarred.

In the final analysis each case of necessity must be decided upon its own particular facts. It is equally true that the object of a proceeding of this character is not to punish the appellant but to protect the integrity of the courts, the public, and the honor and good name of the profession. If the appellant has been guilty of misconduct involving what is commonly called "moral turpitude" we cannot seriously disagree that he should not be disbarred. Herein lies the "crux" of this whole proceeding. It is not contended that the appellant has violated any law or been dishonest. If he is to be disbarred, it must be on the ground that his conduct shocks all our known conceptions of the duty of a lawyer to the court, to the profession and to the public. It does little good to state general principles or broad statements such as are contained in the Committee's brief unless the same are supported by a reasonable interpretation

of the facts. Perhaps as the committee suggests, we are blind to the appellant's dereliction. However, we will endeavor to point out in this Reply brief how untenable the position of the Committee is and why a careful analysis of the evidence does not support a conclusion that he is unscrupulous, untrustworthy, "a traitor" and afflicted with a "moral myopia".

We believe that the trial court has unconsciously embarked on an exploratory excursion into the field of morals. This is not primarily a judicial function and all too frequently results in an unwarranted extension of the definition of "moral turpitude". We believe that the court has, also, unconsciously perhaps, mistaken its own bias for an intuitive perception of the common conscience.

Show us a lawyer with a bad heart, a bad mind, a person without conscience if you will, and we will show you a person who is not entitled to practice law. On the other hand, can you show us a young lawyer just beginning his practice who has not made mistakes of judgment? Contrary to the impression that the committee seeks to leave with this court that the appellant's attitude is wrong (R. B. P. 22), the appellant admits that some of his acts had the appearance of impropriety and should never be duplicated in the future. But never did the appellant act through improper motives or with that baseness of conscience that must characterize an act justifying permanent disbarment.

Therefore, our problem, here, is the application of well recognized rules of law to the specific facts of this record.

FIRST PROPOSITION: ACTS JUSTIFYING DISBARMENT

It is submitted that the judgment of the trial court must stand or fall upon the question whether the appellant's acts involved moral turpitude. Bouvier's Law Dictionary defines "moral turpitude":

> "An act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rules of right and duty between man and man."

To attempt to set forth cold principles of law and to attempt to draw analogies from other cases will not suffice. The courts from the earliest days have attempted to set forth acts justifying disbarment. See notes set forth following cases in 13 Fed. 820, 8 Pac. 52, 2 At. 214. The Committee does not contend that the appellant's conduct approaches any of these known rules of unethical conduct.

Reference is made by the committee to the case of *ex parte Finn,* 32 Or. 519. With the language of Justice Bean we agree but the facts in the cases are materially different. In the Finn case the attorney filed purported sworn affidavits in the Supreme Court for the purpose of affecting litigation therein pending. In fact the affidavits were never sworn to before Finn although he affixed his notarial seal. The attorney was suspended for one year. Perhaps we are not the "discerning person" suggested by the committee (R. B. P. 3) but we fail to see the application of the principles therein enun-

ciated to the instant case unless suspicion is to be read into each of the appellant's acts.

It is next suggested that the protection of the public and the integrity of the courts require appellant's disbarment (R. B. P. 2). Nowhere can it be shown, nor, indeed, is any attempt made by the committee to do so, that the appellant sought to mislead a client or the court. Has he been dishonest? Has he sought to deceive? Has anything been shown to indicate his intentions and motives were bad? It has not and cannot be so shown, not in one single instance.

We take it as agreed that each proceeding of this nature must rest upon its own particular facts. We have been unable after diligent search to find any decision, State or Federal, where the facts even remotely correlate with those here and any penalty approaching permanent disbarment has been imposed.

In our statement of points to be relied upon in this appeal (R. P. 206) it was contended that the evidence was insufficient to support or justify the findings and judgment entered by the District Court. Of course necessarily included in this statement, is the question, among others, whether the Trial Court abused its discretion in entering such findings and judgment of *permanent disbarment*. This is true because if the evidence is not sufficient to justify such findings and judgment, it necessarily follows that the court abused its discretion in so entering them.

SECOND PROPOSITION: MARVIN L. HUGHES v. ALASKA STEAMSHIP CO.

Respondent has set forth certain rules of Professional Conduct both in Appendix A and in their brief. We do not disagree with the principles set forth therein. They, however, are not pertinent, except to a limited extent, to the facts in issue.

It is pointed out that the appellant failed to advise Hughes of his rights and to consult other counsel until after these disciplinary proceedings had been commenced (R. B. P. 1). The evidence conclusively shows that this was the first time any possible impropriety of his actions was called to his attention. It indicates to us that the appellant always had the interests of Hughes in mind and also did not intentionally perform any act of unprofessional conduct.

It is suggested by innuendo that the appellant represented Hughes through his desire for personal gain. The committee frankly admits there is no evidence or means of ascertaining this fact (R. B. P. 5). If this be true, better it be left unsaid than to attempt to prejudice the appellant before this Court by such a method.

It is next pointed out that since appellant felt he was protecting interests of the United States in representing Hughes he was thereby willing to sacrifice Hughes' interests in favor of his primary duty to the United States (R. B. P. 6). On the face of it, the committee has suggested an imposing argument. However, as will be later pointed out, the appellant thought he

was protecting the interests of the United States in not subjecting it to a suit that he felt in good conscience was unfounded. That is what the appellant's intentions were and not that he was sacrificing Hughes' interests.

Hughes was traveling on a peculiar ticket at the time of his injury as is disclosed in Exhibit 2. The provisions of his War Shipping Ticket as in the case of *Arnestal v. U. S., et al.,* 1946 A.M.C. 1364, limited his right to recover in tort for any injuries he received. In similar cases instituted by seamen, private insurance carriers were defending the action. No decisions of courts were available at that time to indicate Hughes' possible rights. Can it seriously be contended that the appellant acted in bad faith and with wrongful motive in honestly believing and contending that Hughes' action, if any, should be asserted against the Alaska S. S. Co. The appellant did not sue the U. S. and no apparent conflict of interests appeared.

We readily agree as respondent states that if the appellant's conduct was wrongful at the time, subsequent decisions could not make it proper (R. B. P. 6). However, we point this out to indicate the good faith and absence of improper motives of the appellant. In the *Arnestal* case, supra, the court confirmed the appellant's actions in believing that Hughes had no claim against the United States.

Respondent suggests that there was a possibility that if Hughes recovered from the Alaska S. S. Co. that the United States might be required to indemnify the defendant (R. B. P. 5). We do not believe that the

construction of the General Agency Contract, even if mistakenly made, should be made the basis of permanent disbarment. In fact no court has ever so construed the General Agency Contract.

It is true, as Respondent states, that an attorney has no right to pursue an unethical course of conduct until cautioned against it (R. B. P. 5). It is equally true that it might be expected that if some serious misconduct occurs before a court where the attorney is just beginning his practice of law, that some mention would be made of the misconduct by the court to the young and inexperienced member of the bar. Especially is this true where it is contended that the misconduct was so flagrant as to warrant permanent disbarment. Where the lawyer complained of is a long experienced practitioner, technical charges might suffice but not against a young and inexperienced person. We urge that intentional wrongdoing and personal dishonesty must be clearly demonstrated in these instances.

An unbiased review of the evidence free from suspicion leads to the conclusion that the appellant did not dishonestly represent Hughes. We submit there is a total lack of proof to so much as suggest that his acts involved moral turpitude and fails utterly to demonstrate his moral unfitness to practice law.

THIRD PROPOSITION: STATE OF OREGON v. JAMES WESTLEY BOWDEN

Respondent in its supplemental statement of facts state that the appellant actively participated in the trial by sitting at the counsel table and cross-examining *"the witness"* (R. B. P. 1). It is then charged that his participation was thereby substantial rather than nominal (R. B. P. 8). To read the committee's brief one would be led to believe that there was only one witness. The fact is that the trial consumed five full days and nineteen witnesses testified. The cross examination of this witness by appellant lasted not to exceed three or four minutes, was brief, and was with respect to a collateral matter. With this minor exception, the cross examination of this witness, as was true of all other witnesses who testified, was conducted throughout by the attorney who was actively trying the case. It is submitted that if the appellant's participation in the case was not nominal, no meaning can be given to the word.

Respondent's statement that the appellant anticipated that he might be called as a witness at the time he accepted employment is not borne out by their reference to the record (R. P. 111). After Mr. Hicks began preparing the defense it was anticipated that there was such a remote possibility but in fact he never was such a witness (R. P. 111, 112, 123, 124). We urge that the opinions submitted by respondent in Appendix B relative to this phase of the case are without application where the attorney does not actually become a witness.

It is next suggested that the fact he was an Assistant U. S. Attorney tended to impress the jury on behalf of the defendant (R. B. P. 8). The record conclusively establishes that the jury was never informed of appellant's status as Assistant U. S. Attorney (R. P. 88, 110).

The charge is made that the appellant acted throughout with improper motives and through his desire for pecuniary gain (R. B. P. 8). No facts are set forth to support this broad and unwarranted charge. The portion of the fee accepted by the appellant was twenty-five per cent. Regardless of whether the Oregon State Bar has specifically approved or sanctioned this fee arrangement (R. B. P. 1), it will not be denied that it is an established custom among the Oregon Bar to collect one-third of the fee where business is given to another attorney on a referral basis. We only point this out to indicate it was not pecuniary gain that was the motivating factor in the appellant's representation of Bowden. As alleged in the appellant's answer, had it been necessary to do so he would have resigned as Assistant U. S. Attorney in order to assist his friend and former client in his hour of extreme need (R. P. 11).

Respondent suggests now that the appellant could not properly appear as a defender in another forum under any circumstances (R. P. 8). The court indicated that had the appellant obtained *"clearance"* from the Attorney General it would have been proper (R. P. 119, 120, 121, 122, 131). The Attorney General's manual directing that this practice should not occur is an interdepartmental ruling which of course could be waived

under certain circumstances. The Attorney General must have felt that the circumstances here would have justified the granting of "clearance" as no action was taken against the appellant by the Attorney General (R. P. 80).

The appellant as Assistant U. S. Attorney was under no circumstances charged with the prosecution of Bowden. There was no conflict of interests. A former Assistant U. S. Attorney was in charge of Bowden's defense (R. P. 112). The District Attorney for the State was fully informed of the appellant's position and no objection was made or intimated (R. P. 110). The U. S. Attorney knew of the appellant's participation in the trial and did not prohibit it (R. P. 120). No word was spoken to the appellant indicating the slightest impropriety of his contemplated action. Did the appellant's action, therefore, indicate a "moral myopia" in his minimal representation of Bowden?

We do not contend that a prosecutor should make it a practice of defending persons charged with a crime in another forum. As a general rule we believe this principle to be sound. However, under certain circumstances, it might be proper, when no possible conflict of interests exist. Certainly it cannot be said the appellant's action involved moral turpitude under the circumstances disclosed.

FOURTH PROPOSITION: JOSEPH MARTIN MATTER

The opinions of the American Bar Association set forth in Appendix C of respondent's brief have no bearing upon the issues involved in this charge. As pointed out in our opening brief, Martin was not a member of the Military, Naval or Marine forces of the United States (A. O. B. P. 29).

Once again the committee has suggested that the appellant's motive was financial gain (R. B. P. 9). Even the testimony of Martin, a convicted criminal and a person dissatisfied because the appellant would not perform a gratuitous service, which he was unable to do, does not sustain the committee's position.

We quote:

> "Q. (Mr. Dezendorf) Was anything said about the amount that would be required in attorney's fees to accomplish this?
>
> A. He said approximately a hundred and seventy-five. There was no set price." (R. P. 65)

Cross examination by Mr. Green:

> "Q. Now, the question with respect to a fee or whatever charge was made, isn't it a fact that what you asked Mr. Patterson was what he thought a lawyer would charge you? Isn't that what you asked him?
>
> A. Approximately how much it would cost to get it.
>
> Q. Yes; and he said that in his opinion it would probably cost about $175, is that right?
>
> A. Well, I was more or less asking him on his

part how much it would cost.

Q. Just answer my question, please. Isn't it a fact that that is what you asked him and that is what he told you?

A. That is what he told me.

Q. Yes. A. Yes.

Q. And that is what you were trying to find out, what your approximate cost would be?

A. Yes." (R. P. 68)

Mr. Twining, Chief Deputy U. S. Attorney, had this to say regarding such a contention:

"The Court (Fee, J.): Yes. In other words, you act on ethical principles.

A. Well, let's say again, in honesty, your Honor, if that is an indication that I think that his conduct was unethical in that case, I think that he was misled, and I don't understand from the facts in this case, I don't understand and haven't since the outset of this case, that Patterson offered to do this for a fee. I don't believe that, and I never thought that. I thought that he was using the thing as an example when it came to that phase. I may be wrong, but I know Patterson was very badly crowded and worked too fast, he was impulsive. I was worried about it. He took off down the alley in a hurry lots of times, and, therefore, when I talked to him first about this thing I got the impression, I thought that Patterson was saying to this fellow, 'This is what I would have to do.' I don't think he ever dreamed that the man would come back. I think he did everything he could to kick him out. In short, if I make myself clear, I have had people in there many times, some of them are hard to make understand, like in these veterans' situations, we would have to represent them here—I can't do it, when they come in from another state, I can't tell them what we would have to do. I would say, 'I would have to charge you three hundred dollars', never intending to do it." (R. P. 154, 155).

Under all the evidence and *with the approval of the Court,* the United States Attorney's office in the District of Oregon had as a matter of regular practice represented such persons in the District of Oregon (R. B. 155, 156, 157). The committee cannot now urge that this appellant should have told Martin that he could not help him because his claim was against the United States (R. B. P. 9).

Respondent then urges that Patterson should have said, "You are a ward of the Court and it is my duty to help you as much as I can free of charge." (R. B. P. 9). What does respondent contend Patterson should have done for Martin that he didn't do? The appellant gave Martin the advice he sought with no attempt to deceive. Only when Martin hesitated did Patterson even suggest that he might possibly be able to help him in his private capacity. Many times an attorney is met on the street by a friend and the friend engages the attorney in conversation regarding a legal matter. It is natural for the attorney to say, "Come up to the office sometime and I'll see what can be done." This does not mean the attorney will represent the friend; it may be that after the matter is fully discussed no action would be taken or the matter might be referred to someone else. Indeed in this very instance, as the record shows without controversy, appellant advised Martin to procure the services of his brother's attorney (R. P. 69, 91). Surely a fair consideration of all the facts leads to a conclusion that the appellant did honestly and without corrupt motive advise Martin in absolute good faith.

This is the charge that Judge McColloch says "impressed him the most" (R. P. 218). This is the same charge upon which Judge Fee lays such stress in his opinion (R. P. 211-213). This is the charge that the respondent *now* states constituted a serious breach of his duty toward both Martin, as a ward of the court, and the United States (R. B. P. 10). In the committee's original findings based upon the complete record, they had this to say:

"IN RE J. ROBERT PATTERSON

FINDINGS OF FACT AND CONCLUSIONS OF LAW

* * * * *

IV.

Joseph Martin Matter.

That Joseph Martin was referred to Mr. Patterson in his capacity as Assistant U. S. Attorney in connection with Martin's desire to procure the release of certain funds deposited in the registry of the United States District Court at San Francisco; that Mr. Patterson advised Mr. Martin as to the method of procuring the release of the funds involved and invited Mr. Martin to consult him at his private office in the Yeon Building, and that Mr. Patterson advised Mr. Martin that the estimated fee for handling the matter was $175.00.

* * * * *

II.

That J. Robert Patterson was not guilty of unprofessional conduct in connection with his handling of the Joseph Martin matter.

A true copy

J. C. DEZENDORF"

Respondent suggests that by reason of his position, the appellant could have taken advantage of Martin even to the extent of securing a revocation of his parole. This to us is a highly remote and speculative conclusion unwarranted by any fact or circumstance appearing in this record. It is to be said to his everlasting credit that no such thing occurred. He took no advantage of anyone, including Martin.

If it can be said that the handing of the business card was a solicitation of business, which was not the circumstance here, as we contend, it must be conceded that it was done in a most honorable fashion. If this is to be condemned then the rich lawyer's private club, golf course, beach home and mountain retreat would be a more practicable starting point.

We submit that as far as this charge is concerned not the slightest moral turpitude can be attached to the appellant's actions.

FIFTH PROPOSITION: UNITED STATES v. COSTELLO

The facts are not in dispute as to the status that existed between Klepper and Patterson at the time of the Costello hearing. After considering all the argumentative material submitted by the respondent, we concede that the appellant made a mistake of judgment in connection with the handling of the Costello matter. The appellant and his counsel agree that it should never be duplicated in the future. While no advantage was

taken of the Court, the accused, or the United States, nevertheless, an appearance of impropriety can be urged even where mere office associates appear on opposite sides of litigation. The facts become doubly important and should be closely scrutinized to see if there is any indication that the appellant acted with improper motives so that his acts can be said to involve moral turpitude.

Before appellant entered the United States Attorney's office he was paid a salary by Klepper, and Klepper, for services rendered appellant, was given one-half of all fees collected by appellant. After appellant entered the United States Attorney's office, no salary was paid appellant by Klepper. Appellant still paid Klepper one-half of his fees for the space he occupied and for telephone, stenographic service, etc. On October 2, 1946, some ten months after the Costello hearing, the parties began doing business under the firm name of Klepper, Brown & Patterson.

Apparently the Standing Committee has abandoned the later charge against the appellant that he was guilty of unprofessional conduct in representing that he was, and in holding himself out as a partner in the firm of Klepper, Brown & Patterson, when in fact no partnership existed. No mention or argument is contained in the respondent's brief on this subject, with the exception of setting forth opinions of the American Bar Association. Since the respondent now states that appellant was a partner all of the time, even before the assumed name certificate was filed, we can only conclude that

the later charge has been abandoned. This merely indicates, to us at least, that respondent is no more sure today of its position than it was at the time the charges were filed.

The appellant paid Klepper for the space and other services furnished by Klepper. There was no attempt at the time of the Costello hearing to hold the other out as a partner. Appellant had no interest in Klepper's practice. The most that can be said is that they were office associates.

It is not contended that Costello was deceived or promised anything in order to get him to enter a plea of guilty. This was his intention at all times. There was no contest such as you have where a plea of "not guilty" is entered by a defendant. The sentence was imposed only after full disclosure of the facts by both the appellant and the Probation Office. The statement made by the committee that defense counsel was wielding economic power over the prosecutor (R. B. P. 13), in fact is untrue. Klepper was paid for all services rendered by Klepper to appellant. Appellant did not share in the fee charged Costello by Klepper (R. P. 94).

Some attempt has been made by respondent in its brief to qualify the holdings of the authorities cited by us in our opening brief (R. B. P. 10-14). We cannot agree that such attempt has been successful. The authorities are agreed that where there is no improper motive or adverse interest, it is not improper for office associates to appear on opposite sides of litigation. We do not intend to imply that such conduct should be

looked upon with favor. We do believe that such practice should be discouraged. However, where a young and inexperienced member of the bar does so act, then it is not ground for permanent disbarment. This is especially so where no improper motive or baseness of conscience is made to appear.

Respondent suggests that our opening brief concedes that a partnership existed between Klepper and Patterson at the time of the Costello hearing (R. B. P. 14-15). This is by no means a true statement. The parties never agreed to associate as partners until the assumed name certificate was filed. No attempt was made to hold the other out as a partner until such time. It is elementary that the intentions of the parties is a strong factor in determining the relationship existing between them at any particular time.

An attempt is made to imply bad faith on the part of counsel and an attempt to mislead this Court (R. B. P. 17). In the findings prepared and entered by the Court, a statement is made "that the Court was not aware of the relationship between Patterson and Klepper and between Patterson, Klepper and Brown, until the same was brought to the attention of the Court by the complaint in this proceeding" (R. P. 23). It is true that an additional statement is also made in reference to the Costello matter "that at the time of these occurrences the Court was unaware of the relationship between Patterson and Klepper and Patterson failed to disclose the relationship to the Court" (R. P. 26-27). It seems to us that the exhibits No. 6, 7, 8, 9, 10, 11, 12

tend to prove that there is no basis for the first statement. While it is true that all of the matters disclosed by the exhibits occurred subsequent to the Costello hearing, nevertheless, certain preliminary matters occurred in the Hughes case prior to this time, Judge McColloch on December 10th ordered the case set for trial. Deposition of witnesses had been taken. It is not unlikely to infer that the Court had some impression that a relationship existed between Klepper and Patterson at the time of the Costello hearing.

We submit that since respondent is now of the opinion that the evidence strongly indicates a partnership to have existed between Klepper and Patterson for some long period of time and the appellant was daily before the Court as an Assistant U. S. Attorney, some intimation of a relationship between them should have occurred to the Court.

It is admitted by counsel and by the appellant that his conduct might subject him to criticism. Where the facts are as disclosed, no attempt was made to deceive the Court, Costello or anyone; a mistake, yes, but not one of conscience, heart or mind.

SIXTH PROPOSITION: DOING BUSINESS UNDER THE FIRM NAME

As previously stated, apparently respondent has now become convinced that there is no merit to this charge of unprofessional conduct as it is not argued in respondent's brief. Respondent has attached Appendix E. con-

taining opinions of the American Bar Association relative to this charge. It is now contended by respondent that the appellant was a partner at all times. It is significant that after the committee had found the appellant not guilty of unprofessional conduct in the Martin matter that it should now change its position in accordance with the opinion of the Court. The same is true here, respondent originally charged that the appellant *never was a partner of Klepper* and after the opinion of the Court states *he always was a partner*. It has always been our contention that the committee in proceedings of this nature acts in the same capacity as counsel *amicus curae*. Here, however, we find the committee echoing the opinion of the Court.

In any event it is submitted there is a total failure of proof that the appellant acted with that "moral myopia" as far as this charge is concerned. There is not the slightest indication that there was a lack of moral conscience on the part of the appellant.

CONCLUSION

The statements made by respondent in their conclusion relative to the appellant's loyalty to his clients are, in our opinion, without support in the record (R. B. P. 17-18). The general principles relative to the duty of a lawyer to his client are correct and with which we agree. Our contention relative to each charge has been fully discussed in this and our opening brief. There is not the slightest suggestion that the appellant in bad con-

science or with unscrupulous motives did any act which tended to injure his clients or anyone.

Respondent has misconstrued our argument if they believe that we have taken a position that this matter should have first been referred to the Oregon State Bar Association or that the procedure was improper. We merely pointed out the difference in the procedure adopted by the District Court of Oregon and the integrated bar. This is not the first time that anyone has advocated a uniform system for admission and disbarment in the Federal Courts. See articles entitled: The Federal Bar: A Decentralized System of Admission and Disbarment, 20 Am. B. Assoc. Journal 762.

In the final analysis the judgment against the appellant must stand or fall upon construction of the trial court's words "moral myopia". The court has painted the young man as an unscrupulous, dishonest and immoral person, one who is not to be trusted with the practice of one of the most honored of professions. We have been unable to justify the court's Opinion, Findings and Judgment. A young man embarking on his career should not be deprived of his long awaited goal unless it can be said the evidence is clear, free from doubt, and overwhelming to the effect that he cannot be so trusted. Appellant made mistakes, yes, as do we all, but even reading suspicion into these mistakes, we cannot conceive of a Court finding on this record that they involved moral turpitude or justified the use of the word "traitor".

It is finally contended that the appellant's attitude is still one of moral blindness (R. B. P. 22). No basis for this conclusion is disclosed. Appellant's counsel have been very close to the appellant and his family since the initiation of these proceedings. His attitude is not one of defiance or personal justification of his acts. He has admitted from the outset that mistakes were made. He realizes that one who practices law must be ever ready to carefully consider his actions before taking them. We believe the committee is unwarranted both as a matter of principle and as a matter of fact from seizing upon the appellant's attitude to justify the judgment of permanent disbarment.

It was our contention to begin with, as it is now our contention, that unprofessional conduct cannot be sustained in the findings from the evidence. It is believed that a clear abuse of discretion is indicated by the trial court's findings and judgment based on the evidence adduced.

In *Bartos vs. U. S. D. C. for Dist. of Nebraska,* 19 F. (2d) 722, a lawyer was suspended for three years for the manufacture of beer in his home in violation of the eighteenth amendment. On appeal the court said:

> "This circumstance mitigates the offense and it seems to me robs it of any such turpitude as would justify the severe punishment of a suspension from practice for a period of three years. The violation of his oath of office as an attorney was a technical one for which a reprimand of the Court would have been sufficient punishment. The severe punishment administered under all the circumstances was in my judgment an abuse of the discretion imposed in the

> Court, and for that reason I concur in the conclusion that the order of disbarment should be set aside."

We respectfully urge that the judgment should be reversed and the order of permanent disbarment set aside.

Respectfully submitted,

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Attorneys for Appellant.